

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'F': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA Nos.6015 to 6018/DEL/2019

[Assessment Years: 2002-03, 2003-04, 2005-06 & 2010-11]

PHI Seeds Private Limited, Plot No.17, 8 th Floor, Unit B and 12 th Floor, Software Units Layout, Survey No.64/2, Madhapur, Serilingampali, Ranga Reddy, Telangana-500081	Vs	Addl. Commissioner of Income Tax, Special Range-7, Room No.-211, C.R. Building, New Delhi
PAN-AACCP3920F		
Assessee		Revenue

Assessee by	Sh. Sandeep Bansal, CA & Ms. Ekta Jain, CA
Revenue by	Ms. Anupama Anand, CIT_DR & Sh. Sanjay Kumar, Sr. DR

Date of Hearing	08.05.2023
Date of Pronouncement	10.05.2023

ORDER

PER SHAMIM YAHYA, AM,

These are appeals by the assessee is directed against the respective order of the Ld. CIT(A)-38, New Delhi, all dated 30.04.2019 pertaining to the Assessment Years 2002-03, 2003-04, 2005-06 & 2010-11, wherein, the Ld. CIT(A) has confirmed the levy of penalty u/s 271(1)(c) of the Act.

2. Since, the issues are common and connected and the appeals were heard together, these are being consolidated and disposed of together for the sake of convenience by this common order.

3. For the sake of reference, we are referring to grounds of appeal for Assessment Year 2002-03 reads as under:-

“1. That on the facts and in the circumstances of the case, the Ld. Commissioner of Income tax (Appeal) erred in law in upholding the order passed by the assessing officer of imposing the penalty under section 271(1)(c) of the Income Tax Act, 1961 as none of the conditions for initiating penalty gets satisfied.

2. That the Ld. CIT(A) has erred in ignoring the fact that The Hon'ble Delhi High Court has admitted the substantial question of law on the agriculture exemption claim made by the appellant company u/s 10 r.w.s 2(1A) of the act thereby holding that it is a debatable issue.

3. That Ld. CIT(A) has erred in placing reliance on various decisions as mentioned in her order.


4. That the Ld. CIT(A) has erred in ignoring the fact that the notice issued by the Ld. AO under Section 271(1)(c) in the printed form without specifically mentioning whether the proceedings are initiated on the ground of concealment of income or on account of furnishing of inaccurate particulars is invalid and bad in law.

5. Without prejudice to the above, the penalty amount as computed by the Ld. AO is not in accordance with the provisions of law.”

4. At the outset, in this case, the ld. Counsel for the assessee submitted that the levy of penalty in this case is illegal in as much as charge in penalty notice is not clear as to whether it is for concealment of income or furnishing of inaccurate particulars of income. To support his proposition, he took us through the notice in this regard attached in the paper book. Furthermore, he placed reliance upon various case laws. This issue has also raised before the Ld. CIT(A). The Ld. CIT(A) has mentioned the submission in this regard but not given the judgment on this issue.

5. Per Contra, the ld. DR submitted that in the penalty order, it is clearly mentioned that the penalty is levied for furnishing of inaccurate particulars of income. But he could not dispute that the notice in this

regard does not mention as to whether it is for concealment of income or furnishing of inaccurate particulars of income. Furthermore, we may gainfully refer to one of the notices of penalty for AY 2002-03 attached in paper book page-67 as under:-


OFFICE OF THE ADDL. COMMISSIONER OF INCOME-TAX
SPECIAL RANGE-7, C.R.BUILDING I.P. ESTATE, ITO, NEW DELHI-110002
Phone / Fax: 011-23705989, 23378106 email id:delhi.addlcit.splr7@incometax.gov.in

Dated :- 02.07.2018

I.T.N.S.-29

आयकर अधिनियम, 1961 की धारा 271 के साथ पढ़ी गई धारा 274 के अधीन नोटिस
NOTICE UNDER SECTION 274 READ WITH SECTION 271 OF THE INCOME TAX ACT, 1961

To,

Under Section 271(1)(c)
PAN: AACCP3920F

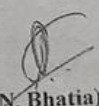
The Principal Officer,
M/s PHI Seeds Pvt Ltd.,
Babukhans' Millenium Centre, Raj Bhavan Road,
Somajiguda, Hyderabad-500082, Andhra Pradesh

Whereas in the course of proceedings before me for the assessment year 2002-03, it appears to me that you:-



~~* have without reasonable cause failed to comply with a notice under section 142(1)/143(3) of the Income Tax Act, 1961 dated.....~~

✓ * have concealed the particulars of your income or furnished inaccurate particulars of income in terms of explanation 1,2,3,4 and 5.

You are hereby requested to appear before me at 01.00 PM on 23.07.2018 and show cause why an order imposing a penalty on you should not be made under section 271(1)(c) of the Income Tax Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative you may show cause in writing on or before the said date which will be considered before any such order is made under section 271(1)(c) of the Income Tax Act, 1961.


(S.N. Bhatia)
Addl. Commissioner of Income Tax,
Special Range-7, New Delhi.
Addl. Commissioner of Income Tax
Special Range-7
C.R. Building, New Delhi-110002

*Delete inappropriate words and paragraphs.


CERTIFIED TRUE COPY


5.1. The charge is omnibus charge and mentioned that “have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of explanation 1,2,3,4 and 5.” It is amply clear that charge has not been specified in the notice. The Ld. DR did not dispute this proposition.

6. Upon careful consideration and hearing both the parties, we find that notice issued u/s 271(1)(c) is omnibus notice without specifying the specific charge upon the assessee as to whether it is for concealment of income or furnishing of inaccurate particulars of income. In this regard, we may gainfully refer to the decision of the Hon’ble Bombay High Court in the case of Mohd. Farhan A. Shaikh vs ACIT in Tax Appeal No.51 and 57 of 2012 dated 11.03.2021. We may also refer to the order of Hon’ble jurisdictional High Court in the case of Pr. CIT vs Sahara India Life Insurance Company Ltd. in ITA No.475/2019 & ors. vide order dated 02.08.2019, the Hon’ble High Court has laid down the following exposition:

“21. The Respondent had challenged the upholding of the penalty imposed under section 271(1)(c) of the Act, which was accepted by the ITAT. It followed the decision of the Karnataka High Court in CIT vs Manjunatha Cotton & Ginning Factory 359 ITR 565 (Kar) and observed that the notice issued by the AO would be bad in law if it did not specify which limb of Section 271(1)(c) the penalty proceedings had been initiated under i.e. whether for concealment of income or for furnishing of inaccurate particulars of income. The Karnataka High Court had followed the above judgment in the subsequent order in Commissioner of Income Tax v. SSA’s Emerald Meadows (2016) 73 Taxman.com 241(Kar.), the appeal against which was dismissed by the Supreme Court of India in SLP No.11485 of 2016 by order dated 05th August, 2016.”

7. Accordingly, following the precedent and on the undisputed proposition that relevant limb of penalty notices was not identified as to whether the penalty was for concealment or furnishing of inaccurate particulars of income, we set-aside the orders of the authorities below by holding that notice u/s 271(1)(c) is invalid. Accordingly the appeal of the assessee stands allowed.

8. Our above order applies *mutatis mutandis* to others assessment years as well.

9. In the result, all appeals of the assessee are allowed.

Order pronounced in the open court on 10th May, 2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Delhi; Dated: 10.05.2023.

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi

Draft dictated	08.05.2023
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Approved Draft comes to the Sr.PS/PS	
Order signed and pronounced on	
File sent to the Bench Clerk	
Date of uploading on the website	
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	